IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

Lalita Devi and anr.

Vs.
State and anr.

S.B. CRIMINAL MISC.PETITION NO.976/2006
under Section 482 Cr.P.C.

Date of Order:- 21/8/2006.

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Anoop Dhand for the accused-petitioners.
Mr. Arun Sharma P.P. for the State.
Mr. R.K. Soni for the complainant-respondent.

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BY THE COURT:-

This petition under Section 482 Cr.P.C. seeks quashing of F.I.R. No.176/2006 P.S. Kotwali, Sikar for offence under Section 420 I.P.C. The only allegation in the F.I.R. is that after entering into an agreement with the complainant on 31/1/2006 the petitioners have filed an appeal before the competent court and has thus cheated the complainant non-petitioner No.2.

After hearing at length learned counsel for the parties as well as learned Public Prosecutor for the State. I have also perused the entire materials placed before me.

From the allegations made in the F.I.R. and the materials collected during investigation, no offence u/S.420 I.P.C. is even prima-facie disclosed.

It is true that merely because remedy by way of civil suit is available there is no impediment in maitaining a criminal complaint provided the complaint discloses the ingredients of the offence of cheating.

In **Alpic Finance Ltd. Vs. P.Sadasivan and anr. : (2001) 3 SCC 513**, default was made by the respondents in payment of instalments by way of repayment of loan advanced by the appellnt under a lease agreement between the parties for purchase of some articles and a complaint was filed by the appellant alleging commission of offence under Section 420 I.P.C. by the respondents. It was held on facts that the complaint did not disclose element of deception or fraud or dishonest inducement or wilful misrepresentation in the entire transaction and, therefore, the complaint was liable to be quashed on facts.

Similarly in **Uma Shankar Gopalika Vs.State of Bihar and anr. : (2005)10 SCC 336** it

was held by the Hon'ble Supreme Court that breach of contract would amount to cheating only if intention to cheat was existing at the very inception. If such intention developed later on the same would not amount to cheating and the remedy in the latter case lay before the civil court by filing a properly constituted suit. It was, therfore, held on facts that the case in question was purely a civil dispute. To allow investigationi to be continued in such a case would amount to abuse of the process of the court. Hence, the prosecution was dismissed.

I am, therefore, fortified in my view from the law laid down in the aforesaid cases that no offence under Section 420 I.P.C. is even prima-facie made out and to permit continuance of the investigation in F.I.R. No.176/2006 clearly tantamouts to abuse of the process of the court. Therefore, it is a fit case in which exercise of the inherent powers of this Court u/S.482 Cr.P.C. is called for, justified and warranted to prevent the abuse of the process of the court and to secund ends of justice.

Consequently, this petition deserves to be and is hereby allowed and F.I.R. No.176/2006 P.S. Kotwali, Sikar for offence under Section 420 I.P.C. is hereby quashed and set-aside.

Anil **(HARBANS LAL), J.**